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Attorneys for Plaintiff State of Oregon

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

FEDERAL TRADE COMMISSION,
STATE OF ARIZONA,
STATE OF CALIFORNIA,
DISTRICT OF COLUMBIA,
STATE OF ILLINOIS,
STATE OF MARYLAND,
STATE OF NEVADA,
STATE OF NEW MEXICO,
STATE OF OREGON, and
STATE OF WYOMING,

Plaintiffs,

Plaintiffs,

v.

THE KROGER COMPANY and ALBERTSONS
COMPANIES, INC.,

Defendants.

Case No. 3:24-cv-00347

**PLAINTIFF STATES' SECOND
MOTION TO EXTEND TIME TO
MOVE FOR ATTORNEYS' FEES**

LR 7-1 CERTIFICATION

Counsel for Plaintiff States have conferred with counsel for Defendants concerning this motion for extension of time for filing a petition for attorneys' fees and costs on or before March 31, 2025. The Defendants stated that they would agree to a 30-day extension (rather than the 45-day extension Plaintiff States were requesting) on the condition that (1) the total request will be in the neighborhood of \$5 million for all States seeking fees, (2) the States will file a single application and no State will separately request fees, and (3) the States will provide information to Defendants regarding hours and rates, by requesting State, in advance of the filing of the fee petition. Plaintiff States explained that they currently are not in a position to commit to a number for the total fee amount and that while they are endeavoring to file a single application that would include each States' separately stated fees, they are not currently in a position to commit to that approach now. Ultimately, Defendants decided to oppose a request for additional time within which to file a fee petition in the Oregon litigation.

MOTION

Plaintiffs, the states of Arizona, California, Illinois, Maryland, Nevada, New Mexico, Oregon, and Wyoming and the District of Columbia (collectively Plaintiff States), move this Court for an order extending the time for Plaintiff States to file a motion for attorneys' fees and costs, pursuant to Fed. R. Civ. P. 6(b)(1) and 54(d) and LR 54. Plaintiff States request this extension to provide the parties additional time to confer and to attempt to reach agreement on attorneys' fees and costs issues in an effort to eliminate the need to file multiple motions for attorneys' fees and costs. In the event the parties are unable to reach an agreement, the additional time is necessary to prepare the briefs and supporting declarations for the petition.

MEMORANDUM

On October 14, 2022, Defendants announced they had reached an agreement that Kroger would acquire Albertsons. On February 26, 2024, the Plaintiff States and the Federal Trade Commission filed a Complaint for Temporary Restraining Order and Injunctive Relief to halt the proposed acquisition pursuant to Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 16 of the Clayton Act, 15 U.S.C. § 26, and an award costs of this action to Plaintiff States, including attorneys' fees. Section 16 of the Clayton Act provides that "any person . . . shall be entitled to sue for and have injunctive relief . . . against threatened loss or damage by a violation of the antitrust laws," including a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Plaintiff States are "persons" under Section 16 of the Clayton Act. *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 260-61 (1972).

On December 10, 2024, this Court issued an Opinion & Order granting Plaintiffs' motion for preliminary injunction. On December 11, 2024, Albertsons announced it was exercising its right to terminate the merger agreement with Kroger. And on December 13, 2024, the Federal Trade Commission, Kroger, and Albertsons jointly moved to dismiss the administrative complaint before the Federal Trade Commission, citing the termination of the proposed merger. Section 16 of the Clayton Act states that "[i]n any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorneys' fee, to such plaintiff." 15 U.S.C. § 26. Plaintiff States will seek their attorneys' fees and costs as prevailing plaintiffs in this action.

Pursuant to Fed. R. Civ. P. 54(d)(2), a motion for claiming attorneys' fees must be filed no later than 14 days after the entry of judgment. Plaintiff States previously sought an extension to file their petition to February 14, 2025, which this Court granted on December 23, 2024 (ECF 555).

The Plaintiff States have been diligently gathering and reviewing their time records for the two-year time period covering the investigation and litigation of this case with the intent to provide one comprehensive attorney fee petition that would incorporate the fees of each of the nine States. The process of gathering and reviewing the time records and collaborating on a single petition has been more time-consuming than originally anticipated. Once the Plaintiff States have an accurate and complete accounting of the fees and costs incurred, they will endeavor to negotiate with Defendants in good faith to narrow if not fully resolve the fee request.

Furthermore, granting this extension will not prejudice the Defendants as the Defendants have already received notice of the Plaintiff States' intent to seek attorneys' fees and will have ample time to respond to the Motion once filed.

Accordingly, for good cause shown, Plaintiff States request that the Court grant an order under Fed. R. Civ. P. 54(d)(2) extending the time for Plaintiff States to file a motion for attorneys' fees and costs to March 31, 2025.

Dated: February 13, 2025.

Respectfully submitted,

/s/ Chris Kayser

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Certificate of Service

I certify that on the date noted below, I caused a true and correct copy of the Plaintiff States' Second Motion to Extend Time to Move for Attorneys' Fees to be served upon the parties of record through the Court's ECF system.

Dated: February 13, 2025.

LARKINS VACURA KAYSER

/s/ Christopher J. Kayser

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CERTIFICATE OF COMPLIANCE

This brief complies with the applicable word-count limitation under LR 7-2(b), 26-3(b), 54-1(c), or 54-3(e) because it contains 1439 words, including headings, footnotes, and quotations, but excluding the caption, signature block, exhibits, and any certificates of counsel.

Dated: February 13, 2025.

LARKINS VACURA KAYSER

/s/ Christopher J. Kayser

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